

No. 48780-2-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

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**STATE OF WASHINGTON,**

Respondent,

vs.

**BENJAMIN ROBERT KROGNESS,**

Appellant.

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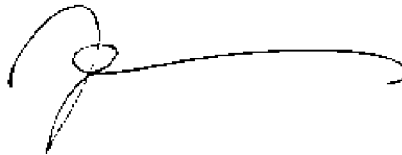
Appeal from the Superior Court of Washington for Lewis County

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**Respondent's Brief**

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JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

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## **TABLE OF AUTHORITIES**

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## **I. ISSUE**

- A. Did the trial court fail to consider Krogness's present or future ability to pay prior to imposing non-mandatory legal financial obligations?

## **II. STATEMENT OF THE CASE**

On June 3, 2015, Benjamin Krogness pleaded guilty to one count of Delivery of Heroin and one count of Possession of Heroin. RP (6/3/15) 7-8; CP 9-18. On July 1, 2015, Krogness was sentenced under the Drug Offender Sentencing Alternative. RP (7/1/15) 21-24; CP 30-39. The court imposed financial obligations, including a \$600 fee for his court appointed attorney, a \$2,000 VUCSA fine, and a \$100 crime lab fee.<sup>1</sup> RP (7/1/15) 22; CP 35. Regarding Krogness's ability to pay, the court stated, "And I'm finding that he has the ability to work and earn money and make periodic payments, \$25 a month starting 60 days." RP (7/1/15) 22. Krogness did not object to this finding, and there was no further discussion of his financial circumstances or ability to pay. RP (7/1/15) 22-27. This appeal follows. CP 41.

The State will supplement the facts as necessary throughout its argument below.

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<sup>1</sup> In Appellant's Opening Brief, Krogness states that the court imposed costs of incarceration. However, the court did not include costs of incarceration in its order or in the Judgment and Sentence. RP (7/1/15) 22; CP 36. The discretionary legal obligations ordered by the court are those listed above.

### III. ARGUMENT

#### A. THE STATE CONCEDES THAT THE TRIAL COURT IMPOSED NON-MANDATORY LEGAL FINANCIAL OBLIGATIONS WITHOUT FIRST INQUIRING ABOUT KROGNESS'S PRESENT OR FUTURE ABILITY TO PAY.

Krogness argues the trial court imposed discretionary legal financial obligations without considering his financial resources and present or future ability to make payments. Brief of Appellant 6.

In *State v. Blazina* the Washington State Supreme Court determined the Legislature intended that prior to the trial court imposing discretionary legal financial obligations there must be an individualized determination of a defendant's ability to pay. *State v. Blazina*, 182 Wn.2d 827, 834, 344 P.3d 680 (2015). The Supreme Court based its reasoning on its reading of RCW 10.01.160(3), which states,

The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

*Blazina*, 182 Wn.2d at 837-38. Therefore, to comply with *Blazina*, a trial court must engage in an inquiry with a defendant regarding his or her individual financial circumstances. *Id.* The trial court must make an individualized determination about not only the present but

future ability of that defendant to pay the requested discretionary legal financial obligations before the trial court imposes them. *Id.* In *State v. Duncan*, the Washington State Supreme Court determined that the imposition and collection of legal financial obligations have constitutional implications and may be challenged for the first time on appeal. *State v. Duncan*, 185 Wn.2d 430, 434-38, 374 P.3d 83 (2016).

The State requested and the trial court imposed discretionary legal financial obligations. CP 35. The court did not conduct any specific inquiry prior to finding that Krogness had the ability work, make money, and make payments. RP (7/1/15) 22. Therefore, the State concedes that non-mandatory legal financial obligations were imposed without inquiring about Krogness's present or future ability to pay, and this Court should remand the case back to the trial court to make the proper inquiry.

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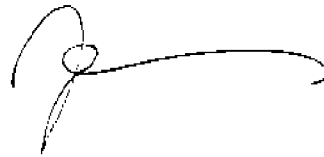
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#### IV. CONCLUSION

The State concedes that non-mandatory legal financial obligations were imposed without inquiring about Krogness's present or future ability to pay. Therefore, this Court should remand the case back to the trial court to make the proper inquiry and impose legal financial obligations accordingly.

RESPECTFULLY submitted this 7<sup>th</sup> day of November, 2016.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

A handwritten signature in black ink, appearing to be 'J. Meyer', with a large loop and a long horizontal stroke extending to the right.

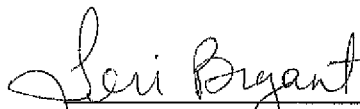
by: \_\_\_\_\_  
JESSICA L. BLYE, WSBA 43759  
Attorney for Plaintiff

**COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II**

STATE OF WASHINGTON,  Respondent,  vs.  BENJAMIN ROBERT KROGNESS,  Appellant.	No. 48780-2-II  DECLARATION OF SERVICE
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Ms. Teri Bryant, paralegal for Jessica L. Blye, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On November 7, 2016, the appellant was served with a copy of the **Respondent's Brief** by email via the COA electronic filing portal to Peter Tiller, attorney for appellant, at the following email address: kevinhochhalter@cushmanlaw.com.

DATED this 7<sup>th</sup> day of November, 2016, at Chehalis, Washington.



Teri Bryant, Paralegal  
Lewis County Prosecuting Attorney Office



## LEWIS COUNTY PROSECUTOR

**November 07, 2016 - 10:29 AM**

### Transmittal Letter

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Objection to Cost Bill

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Response to Personal Restraint Petition

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### Comments:

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Sender Name: Teresa L Bryant - Email: [teri.bryant@lewiscountywa.gov](mailto:teri.bryant@lewiscountywa.gov)

A copy of this document has been emailed to the following addresses:

[kevinhochhalter@cushmanlaw.com](mailto:kevinhochhalter@cushmanlaw.com)